

VFH

263 NLRB No. 73

D--9134
Assonet, MA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LAWRENCE READY MIX CONCRETE
CORP. d/b/a ASSONET SAND &
GRAVEL

and

Case 1--CA--19093

GENERAL CHAUFFEURS, TEAMSTERS,
WAREHOUSEMEN, HELPERS,
MISCELLANEOUS, INDUSTRIAL AND
PRODUCTION WORKERS, LOCAL UNION
526, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on September 22, 1981, by General Chauffeurs, Teamsters, Warehousemen, Helpers, Miscellaneous, Industrial and Production Workers, Local Union 526, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Lawrence Ready Mix Concrete Corp. d/b/a Assonet Sand & Gravel, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on November 5, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of

263 NLRB No. 73

the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated Section 8(a)(3) of the Act by discriminating against five employees because they engaged in concerted activity protected by the Act or because they were members of and gave assistance to the Union. The complaint also alleges that, because of the above acts of discrimination, Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act. Respondent failed to file an answer to the complaint.

On May 21, 1982, counsel for the General Counsel filed directly with the Board a Motion to Transfer Case to Board and for Summary Judgment. Subsequently, on May 27, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause, and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations

Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, Respondent was duly served with the complaint and notice of hearing on November 5, 1981; it filed no answer by January 19, 1982; and, on that date, Respondent's counsel was informed by telephone by counsel for the General Counsel that the answer was past due. On January 20, 1982, pursuant to a request by Respondent's counsel, Respondent was granted an extension of time to file its answer until February 8, 1982. When Respondent

had failed to file an answer by April 12, 1982, the General Counsel extended the deadline until April 22, 1982, and notified Respondent by certified mail that a motion for summary judgment would be filed if no answer was received by April 22, 1982. As noted above, Respondent thereafter failed to file an answer and has failed to file a response to the Notice To Show Cause.

Accordingly, in light of the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, a Massachusetts corporation with its principal office and place of business in Falmouth, Massachusetts, and a branch office at Ridge Hill Road, Assonet, Massachusetts (herein called the Assonet facility). Respondent is now and continuously has been engaged at its Assonet facility in the production, sale, and distribution of gravel. Respondent in the course and conduct of its business annually receives goods and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Massachusetts.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in

commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

General Chauffeurs, Teamsters, Warehousemen, Helpers, Miscellaneous, Industrial and Production Workers, Local Union 526, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Respondent laid off employees Frank Ferriera and Anthony Reis on or about September 15, 1981, and also laid off employees George Bumps, Antone Souza, and John Tripp on or about September 16, 1981. All these employees worked at its Assonet facility. The above-named employees were laid off because they had engaged in concerted activity protected by the Act or because they were members of and gave assistance to the Union. Respondent recalled employee Frank Ferriera on or about September 18, 1981, for a partial day and recalled all of the above-named employees on or about September 21, 1981.

Accordingly, we find that, by laying off the employees named above, Respondent did discriminate and is discriminating in regard to the hire, tenure, terms, or conditions of employment of the employees named above, thereby discouraging membership in the Union in violation of Section 8(a)(3) of the Act. We also find that, by the aforesaid conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of the

rights guaranteed them under Section 7 of the Act, and that, by such conduct, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent discriminatorily laid off employees Frank Ferriera, Anthony Reis, George Bumps, Antone Souza, and John Tripp, and we shall order Respondent to make said employees whole for any loss of earnings suffered because of the discrimination against them. Backpay shall be based upon the earnings which each employee would normally have received between the date the employee was laid off and the date he was reinstated, and shall be computed on the basis set forth in F. W. Woolworth Company, 90 NLRB 298 (1950), with interest as computed

in Florida Steel Corporation, 231 NLRB 651 (1977).¹ We shall also order Respondent to cease and desist from laying off or otherwise discriminating against any employee for engaging in protected concerted activity and from in any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.²

The Board, on the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Lawrence Ready Mix Concrete Corp. d/b/a Assonet Sand & Gravel is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Chauffeurs, Teamsters, Warehousemen, Helpers, Miscellaneous, Industrial and Production Workers, Local Union 526, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the acts described in section III, above, Respondent has discriminated against its employees in regard to the hire, tenure, terms, or conditions of employment and by doing so has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and, by the same acts described above, Respondent has interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act.

¹ See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1972).

² In accordance with our decision in Sterling Sugars, Inc., 261 NLRB No. 71 (1982), we shall order Respondent to expunge from its files any reference to the layoffs.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lawrence Ready Mix Concrete Corp. d/b/a Assonet Sand & Gravel, Assonet, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off or otherwise discriminating against any employee for engaging in protected concerted activity for the purpose of collective bargaining or mutual aid or protection or because they are members of, and gave assistance to, a labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole employees Frank Ferriera, Anthony Reis, George Bumps, Antone Souza, and John Tripp for any losses of pay suffered as a result of the discrimination against them in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(b) Expunge from its records and files any reference to the layoffs of Frank Ferriera, Anthony Reis, George Bumps, Antone Souza, and John Tripp, and notify them in writing that this has

been done and that evidence of these layoffs will not be used as a basis for future personnel action against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Assonet, Massachusetts, facility copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. August 17, 1982

John R. Van de Water, Chairman

John H. Fanning, Member

Robert P. Hunter, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT layoff or otherwise discriminate against any employee for engaging in protected concerted activities for the purpose of collective bargaining or mutual aid or protection or because they are members of, and gave assistance to, a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole, with interest, Frank Ferriera, Anthony Reis, George Bumps, Antone Souza, and John Tripp for any loss of pay they suffered as a result of the discrimination against them.

WE WILL expunge from our records and files any reference to the layoffs of Frank Ferriera, Anthony Reis, George Bumps, Antone Souza, and John Tripp, and notify them in writing that this has been done and that evidence of these layoffs will not be used as a basis for future personnel actions against them.

LAWRENCE READY MIX CONCRETE CORP.
d/b/a ASSONET SAND & GRAVEL

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Keystone Building, 12th Floor, 99 High Street, Boston, Massachusetts 02110, Telephone 617--223--4550.